THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION Nos.19249 & 19250 of 2007

DATED: 11-09-2007

Anshu Bai & another.

...PETITIONERS

AND

The Revenue Divisional Officer,
Bodhan,
Nizamabad District & 2 others.

…RESPONDENTS

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COMMON ORDER:

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Heard learned counsel appearing for the petitioners as well as the learned Government Pleader for Revenue appearing for the respondents.

2. Similar questions arise in these Writ Petitions and therefore they are being disposed of by a common order.

3. The 2nd respondent-Tahsildar, Madnoor mandal, issued Memo No.B/3479, dated 27-08-2007, stating that one late Baloo, S/o Moglai is the 38E certificate holder, issued under the provisions of Hyderabad Tenancy and Agricultural Lands, Act, 1950 (for brevity, 'the Act') of an extent of
Ac.17.28 guntas situated at Tadgoor (B) village, Madnoor mandal, Nizamabad District, and the said original 38E certificate holder expired and his legal heirs made a representation to restore possession of the said land and the petitioners found in occupation of Ac.6.17 cents and
Ac.5.00 respectively situated in Sy.No.175 and the said occupation of the petitioners over the said tenancy lands is illegal and contrary to the judgments of this Court and also the provisions of the said Act, and as the petitioners are in illegal possession of the said lands they are called upon to submit explanation within three days as to why possession of the said lands shall not be taken over by the Government and to hand over the same to the legal heirs of 38E certificate holder.

4. Petitioners question the said order stating that issuance of notice to submit explanation is illegal and contrary to the Transfer of Possession and Eviction Rules, 1957 (for brevity, 'the Rules') which were framed in exercise of powers conferred by Sections 97 r/w Sections 32, 94 and 98 of the Act. It is stated that as per Rule 3 of the said Rules, the Tahsildar shall issue a notice to the person whose occupation of the lands is said to be unauthorized or wrongful to show cause within two weeks from the date of service of notice as to why he should not be evicted from the said land. It is stated that notice under Rule 3(1) of the Rules granting two weeks time has not been given and therefore the said notice is illegal and arbitrary.

5. Rule 3(1) of the Rules discloses that the occupant of the land in contravention of subsequent 38E certificate shall be given two weeks time to submit explanation, and under Rule 3(2) of the Rules the legal heirs or the holder of 38E certificate also shall be given two weeks time to adduce evidence and after expiry of two weeks only the Tahsildar, after hearing such objections and representations, shall pass an order determining whether the occupant is in unauthorized possession, and whether the claim of the claimant to put them in possession is valid or not and if it is found that the occupant is in occupation of the unauthorized or wrongful possession an order is to be passed specifying the time by which he has to vacate the same. Therefore, I am of the opinion that the impugned memo is only a show cause notice but instead of giving two weeks time three days time alone has been given.

6. Having regard to the facts and circumstances, Writ Petitions are disposed of granting two weeks time to the petitioners to

submit explanation to the impugned memo, dated 27-08-2007, and after receiving the explanation within the stipulated time of two weeks from today, the 2nd respondent is directed to follow the due procedure prescribed under the said Rules and pass appropriate orders in accordance with law. Till then petitioners shall not be dispossessed. No order as to costs.

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V. ESWARAIAH, J

11th September, 2007.

Note:

Issue operative portion of the order by wire at party's costs.

B/o

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